IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5239 of 2004

Between:

1. Ushodaya Municipal Public Health, Ex.Employees Families Welfare Association(Regd.No.145/98) rep.by its Manager
Ch.Raja Krishna S/o.Venkaiah R/o.Narasaraopet
2. Navodaya Parisudhya Sangham (Regd.no.4/2004) Narasaraopet, rep.by its Manager, M.Guru Krishna Vara Prasad S/o.M.Venkaiah
3. Ongole Harijana Private Parisudhya Panivarala Sangham, Ongole, rep.by its President, Anantharapu Veeraiah W/o.Kotaiah, R/o.Kothapatnam Road, Ongole.
4. Abhudaya Harijana Parisudhya Panivarala Sangham, Guntur (regd.No.
5. The Harijana Labour Contract Coop.Society, Kakani, Narasaraopet, (Regd.No.Z- 723) rep.by its Manager, M.Venkaiah, S/o.Kotaiah R/o.Kakani
6. Karimnagar Harijana Girijana Private Sanitation Workers Welfare Association(Regd.no.132/2004)rep.by its President
Jakkula Laxmaiah, S/o.Laxmaiah D.No.9-9-145, Ramnagar, Karimnagar.

... PETITIONERS

AND

The Commissioner, Municipal Corporation of Vijayawada Vijayawada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, declaring the action of the respondent in not giving the tender schedules to the petitioners free of cost and without insisting on payment of E.M.D and in not reserving at least 15% or more of all the works, including sanitation works in the tender notice called for by the respondent in Rc.no.F2-18671/2004 dt.09.03.2004 as illegal, arbitrary and

unconstitutional and consequently direct the respondent 1) to reserve at least 15% or more of all works, including sanitation works, for entrustment to the petitioners without participating in the tenders, 2) to issue the tender schedules to the petitioners free of cost and without insisting on payment of E.M.D.in all the tenders, including the said tender notice issued by the respondent.

Counsel for the Petitioners: MR.P.GOVIND REDDY

Counsel for the Respondent: MR.T.S.VENKATARAMANA FOR RVAK.

The Court made the following:

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.5239 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the action of the respondent – the Municipal Corporation of Vijayawada in not issuing the tender schedules to the petitioners free of cost and without insisting on payment of earnest money deposit and in not reserving at least 15% or more of all the works including sanitation works in the tender notice dated 09-03-2004 issued by the respondent as arbitrary and illegal and for a consequential direction to reserve at least 15% or more of all works including sanitation works for entrustment to the petitioners without participating in the tenders and to issue the tender schedules to the petitioners free of cost and without insisting on payment of earnest money deposit in all the tenders including the tender notice dated 09-03-2004.

2. The petitioners claim to be the societies formed among the persons belonging to SC & ST communities and erstwhile sanitary workers for the purpose of ameliorating and improving their living conditions and for eking out their livelihood by participating in tenders relating to sanitation and other works in all the departments. It is claimed that as per Memorandum No.2054/J1/83-2/M.A., dated 07-10-1983, the respondent Municipal Corporation is bound to issue the tender documents free of cost to the petitioner associations and that apart as per G.O.Rt.No.269, M.A., dated

7-4-1998 the respondent is bound to issue the tender schedules to the petitioner societies without insisting on payment of earnest money deposit. It is also claimed that all the Municipalities and all the Municipal Corporations are obligated to reserve at least 15% of the sanitation works for entrustment to Labour Contract Co-operative Societies of the SC & STs and sanitation workers without participating in the tenders. While so, the respondent Corporation issued a tender notice dated 09-03-2004 inviting tenders for supply of the sanitary materials in the Public Health Department. However, the respondent did not reserve the 15% of the works for entrustment to the Labour Contract Co-operative Societies in compliance with the decision of this Court. That apart, the respondent also refused to issue the tender schedule to the petitioner societies free of cost and to give exemption from payment of earnest money deposit in terms of Memorandum, dated 7-10-1983 and G.O.Rt.No.269, dated 7-4-1998. Alleging that though the petitioners made a request to extend the said benefits, the respondent refused to accede, this writ petition was filed on 18-03-2005 seeking the above relief.

3. This Court while directing notice to the respondents, by order dated 19-03-2004 directed the respondents to issue tender schedules to the petitioner societies free of cost and without insisting on payment of earnest money deposit in pursuance of the tender notice dated 09-03-2004.

4. It appears that thereafter the respondent Corporation issued another tender notice dated 8-6-2004 for supply of material and also workmen for performing the sanitation works for the Krishna Pushkarams-2004. Alleging that the respondent has again failed to issue the tender schedules free of cost and to exempt the petitioner societies from payment of earnest money deposit, the petitioners filed W.P.M.P.No.12984 of 2004 seeking a direction to issue the tender schedules to them free of cost and without insisting on payment of earnest money deposit. This Court granted the interim directions as prayed for on 22-06-2004.

5. It is not in dispute that the interim order dated 19-03-2004 was complied with, but the petitioners allege that the subsequent order dated 22-04-2004 in W.P.M.P.No.12984 of 2004 has not been complied and accordingly the writ

petitioners filed C.C.No.778 of 2004 which is also disposed of today by a separate order.

6. The respondent filed a counter-affidavit in the writ petition stating that the tenders were invited under the tender notice dated 10-03-2004 for procurement of material to Public Health Stores, Vijaywada Municipal Corporation for the purpose of sanitation work in Vijayawada City. It is stated that since under the said notice tenders were not invited for execution of the sanitation work, the exemption as claimed by the petitioners does not attract. Even the reservation of 15% as provided under the Memorandum dated 7-10-1983 and G.O.Rt.No.269, dated 17-4-1988 is not applicable to the tenders invited for procurement of material and therefore the tender notice dated 10-03-2004 is in accordance with law.

7. I have heard the learned Counsel for the petitioner, learned Standing Counsel for the respondent and perused the material on record.

8. At the outset, it is to be noted that G.O.Ms.No.581, dated 6-11-1996 prescribes certain modalities for the purpose of entrustment of sanitation works in Municipalities / Municipal Corporations to the Societies formed by the retired public health workers or their dependents and badli workers. Subsequently, under G.O.Rt.No.269, M.A., dated 7-4-1998 directions were issued that the societies formed by the retired public health workers as contemplated in G.O.Ms.No.581, dated 6-11-1996 be exempted from the payment of earnest money deposit on participation in the tenders called by the Municipalities and Municipal Corporations for entrustment of sanitation work. However, it is apparent from the said orders that the said directions are meant only for execution of the "***sanitation works***". A perusal of the tender notice dated 9-3-2004 shows that under the said notice tenders were invited for supply of certain sanitary material only, but not for execution of the sanitation works. Therefore, I am unable to hold that the action of the respondents in not issuing tender schedules under the tender notice dated 9-3-2004 free of cost and in not granting exemption to the petitioner societies from payment of earnest money deposit as arbitrary or illegal.

9. At any rate, it is not in dispute that by virtue of the interim order dated 19-03-2004 the petitioner societies were issued the tender schedules free of cost and without insisting on payment of earnest money deposit.

10. However, since the prayer in the writ petition includes a direction to the respondent to reserve 15% of the works in all tenders issued by the respondent and to issue tender schedules free of cost without insisting on payment of earnest money deposit, the learned Counsel for both the parties made their submissions with regard to the entitlement of the petitioner societies for the said benefits.

11. On a perusal of G.O.Ms.No.581, dated 6-11-1996 as modified under G.O.Ms.No.251, dated 28-05-2002, it is clear that the Government keeping in view the need for improvement of efficiency in sanitation has decided to entrust the sanitation work to the Societies formed by the retired public health workers or their dependants and badli workers with the modalities specified thereunder.

12. So far as their claim for exemption of Earnest Money Deposit, the petitioners rely upon G.O.Rt.No.269, M.A., dated 7-4-1998, which runs as under :

> *"Government have examined the proposal of the Commissioner & Director of Municipal Administration, Hyderabad contained in his reference read above and hereby direct that the societies formed by Retired Public Health Workers or their dependents and Badli Workers as contemplated in G.O.Ms.No.581, M.A., dated 6-11-996,* ***be exempted from the payment of E.M.D. on participation in the tenders called by the Municipalities and Municipal Corporation for entrustment of sanitation work to others****."*

13. With regard to supply of tender schedules free of cost, the petitioners rely upon Memorandum No.2054/J1/83-2, M.A., dated 7-10-1983. The relevant portion of the said Memorandum runs as under :

> *"In the circumstances stated by the Chief Engineer (Public Health) and the Director of Municipal Administration, Government after careful consideration, have decided to agree with the request of the Society for supplying of tender documents free of cost to the Banjara Tribal Co-*

operative Labour Contract Society Limited, Hyderabad, and also the Scheduled Castes and Scheduled Tribes and Labour Contract Societies as the cost involved is negligible."

14. In the light of the above Government Orders, it is clear that the societies formed by retired public health workers or badli workers as contemplated under G.O.Ms.No.581 are exempted from payment of earnest money deposit and they are also entitled for supply of tender schedules free of cost. Nothing has been placed before this Court to show that any other order has been passed by the Government superseding G.O.Rt.No.269, dated 7-4-1998 or Government Memo dated 7-10-1983. However, the learned Standing Counsel for the respondent contends that it is necessary for the concerned societies who claim the abovesaid exemptions to produce the relevant material to show that the societies are formed by members belonging to eligible Scheduled Castes, Scheduled Tribes and Backward Classes as well as former employees of Public Health Department.

15. The learned Standing Counsel also points out that in similar circumstances, in W.P.No.18888 of 2003 this Court held that it is necessary for the petitioners therein to make proper applications along with list of their members and their details and also evidence in support thereof while seeking tender schedules.

16. In the circumstances, I am of the view that it is always necessary for the societies which claim supply of tender schedules free of cost and also seek exemption of earnest money deposit to make proper applications furnishing the details of the formation of their societies, list of their members and other details together with the evidence in support thereof while seeking tender schedules as and when a tender notice is issued. On such applications, the respondent Corporation is bound to verify the material furnished and if it is found that the societies are formed as per the modalities specified under G.O.Ms.No.581, dated 6-11-1996 as amended in G.O.Ms.No.251, dated 28-5-2002 shall issue tender schedules free of cost and shall grant exemption from payment of earnest money deposit. It is made clear that the above exemptions shall apply only for the tenders invited for execution of the ***sanitation works***.

17. Then, coming to the claim of the petitioners for reservation of 15% of the works, it is to be noted that Rule-3(2) of A.P. Municipalities Tender Rules, 1967 as substituted by G.O.Ms.No.477 (MA), dated 28-8-1999 provides that 15% of the works may be reserved for entrustment to the Labour Contract Co-operative Societies. The said Rule runs as under :

> *"At least 15% of the works may be reserved for entrustment to the Labour Contract Co-operative Societies formed of Scheduled Castes, Scheduled Tribes and Vadderas and the individuals belonging to the said communities who happened to be unemployed or retrenched engineers."*

18. It appears that thereafter G.O.Ms.No.30, dated 18-6-2000 was also issued under which the Municipalities were obligated to entrust a portion of the sanitary work to such societies formed by the sanitation workers unions without participating in the tenders, so that efficiency in sanitation may be improved.

19. This Court in D.L.C. CO-OP. SOCIETY v. COMMR., L.B.NAGAR MUNICIPALITY, R.R. DISTRICT having considered Rule-3(2) of the Rules as well as G.O.Ms.No.30, dated 18-6-2000 held that an obligation is cast on the Municipality to reserve at least 15% of the sanitation works for entrustment to Labour Contract Societies. The abovesaid legal position has not been disputed by the learned Standing Counsel for the respondent.

20. Accordingly, it is made clear that whenever tenders are invited it is necessary for the respondent Municipality to reserve at least 15% of the works for entrustment to the Labour Contract Societies as described in Sub-rule (2) of Rule 3 of the Rules and also to supply tender schedules free of cost and also to grant the exemptions with regard to the earnest money deposit subject to the conditions indicated above in para-16.

21. With the above observations, the Writ Petition is disposed of. No costs.

21ST April, 2005.

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To

1. The Commissioner, Municipal Corporation of Vijayawada Vijayawada.

2. Two C.D. copies.